APPELLATE CRIMINAL—FULL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Oldfield and Mr. Justice Coutts Trotter.

A. T. SANKARALINGA MUDALIAR (PETITIONER)

v.

NARAYANA MUDALIAR AND THREE OTHERS (ACCUSED IN S.C. No. 70 OF 1921 ON THE FILE OF THE SESSIONS COURT, TINNEVELLY DISTRICT).*

1922, April 25.

Criminal Procedure Code (V of 1898), ss. 366, 367, 433, 537—Judgment—Irregularity—Acquittal—Revision petition—Dismissal—Power of High Court to grant costs.

The High Court will not ordinarily interfere in Revision at the instance of private parties with a judgment of acquittal except when it is urgently demanded in the interests of public justice.

Where in a sessions case, the Sessions Judge at the end of the trial wrote a document headed "Judgment" setting forth the findings of the assessors and adding his own finding agreeing with the assessors that the accused were not guilty and acquitted them and on a later date he wrote and prefixed to that document a fuller and detailed judgment, it was held that though such a course may be an error in procedure it is a mere irregularity cured by section 537 of the Code of Criminal Procedure. The High Court has no jurisdiction to grant costs in criminal cases except in those cases where the Code of Criminal Procedure makes express provision. The maxim, *expressio unius est exclusio alterius*, applied.

PETITION under sections 435 and 439 of the Criminal Procedure Code, 1898, to revise the judgment and order of J. K. LANCASHIRE, Acting Sessions Judge of Tinnevelly Division, in S.C. No. 70 of 1921.

The accused were committed on a charge of murder. After a trial lasting for three weeks the Sessions Judge "left certain specific questions to the assessors. The assessors agreed that the accused were not guilty and

* Criminal Revision Case No. 26 of 1922.

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in answer to a specific question, they agreed that certain witnesses were not worthy of belief." He then "wrote a document headed 'Judgment' setting forth the findings of the assessors and adding his own finding agreeing with the assessors that the accused were not guilty and acquitted them. At a later date he wrote and prefixed to that judgment a full reasoned judgment dealing with the various points raised, the classes of witnesses and the reasons he had for disbelieving those witnesses." Against that acquittal a Revision Petition was filed and it was argued for the petitioner that there was no compliance with the provisions of sections 366 and 367 of the Code of Criminal Procedure and that a re-trial ought to be ordered. It was argued on the other side that the High Court would not ordinarily interfere with an acquittal on the petition of a private person, when the Crown had not chosen to appeal against it. It was also urged that the procedure followed by the Sessions Judge was a mere irregularity which was cured by section 537 of the Code of Criminal Procedure and that the order of acquittal ought not to be set aside on the ground of mere irregularity.

Another question that was raised was whether, in case a Criminal Revision is dismissed, the Court could grant costs to the respondents. Their Lordships delivered the following Order.

K. P. M. Menon for *T. Richmond* with *Chidambaram* and *Marthandam* for petitioner.

Nugent Grant, *T. Ranga Achariyar*, *T. Sriranga Achariyar* with *S. Ramaswami* for accused.

The Public Prosecutor for the Crown.

SCHWABE, C.J.

SCHWABE, C.J.—This is a criminal revision petition against the acquittal of the accused on a charge of murder, in a case tried by the Sessions Judge of Tinnevelly. The ground and the only ground on which we

are asked to order a re-trial is that the learned Judge did not deliver in court his full reasons for acquitting the accused. At the end of a three weeks' trial he left certain specific questions to the assessors. The assessors agreed that the accused were not guilty and in answer to a specific question, they agreed that certain witnesses for the prosecution, who were the principal witnesses, were not worthy of belief. The Acting Sessions Judge then wrote a document headed "Judgment" setting forth the findings of the assessors and adding his own finding agreeing with the assessors that the accused were not guilty and they were acquitted. At a later date he wrote and prefixed to that judgment a full reasoned judgment dealing with the various points raised, the classes of witnesses and the reasons he had for believing or disbelieving those witnesses. It is argued that that is not complying with the terms of sections 366 and 367 of the Code of Criminal Procedure. Under section 367 a judgment is to be written by the Judge containing the point or points for determination, the decision thereon and the reasons for the decision, and the same section, sub-section (4) dealing with acquittals says,

"If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty."

Now, the judgment that was delivered in Court complied with section 367(4), because it stated, by a reference back to the question to the assessors, the offence and directed that the accused be set at liberty. Whether that is a sufficient compliance with section 366 or 367 is a difficult question. There is a dictum in *Queen-Empress* v. *Hargobind Singh*(1), that it is not. The correctness of that dictum has certainly been questioned in *Tilak Chandra Sarkar* v. *Baisagomoff*(2). I do not think it is

(1) (1892) I.L.R., 14 All., 242. (2) (1896) I.L.R., 23 Calc., 502.

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necessary in this case to express any view on that matter; because, under section 537 of the Code of Criminal Procedure, no finding of a Court is to be reversed on account of any error, omission or irregularity in various matters including a judgment. In my view, assuming that the method adopted by the learned Judge in this case is not a full compliance with sections 366 and 367, it is a mere irregularity and in my judgment, it is not open to us to set aside the acquittal on that ground alone. But this case gives rise to another interesting question, namely, the powers in revision of this Court of setting aside this acquittal. Where there is an appeal by the Public Prosecutor or the Crown from an acquittal, the Court sets its face against revision; but where a Private Prosecutor, having no power to appeal, comes to the Court in revision it is certainly open to the Court to hear him. But it has now been laid down in a long series of cases what, on that sort of application, should be the guiding principle to be acted upon by the Court and I think it is very clearly stated in *Fanjdar Thakur* v. *Kashi Chowdhury*(1), by JENKINS, C.J. There he reviewed the practice of all the High Courts in India on this point and summarized his conclusions in these words:

> "I am not prepared to say the Court has no jurisdiction to interfere on revision with an acquittal, but I hold it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice. This view does not leave an aggrieved complainant without remedy; it would always be open to him to move the Government to appeal under section 417, and this appears to me the course that should be followed"

that is to say that the private prosecutor can, if he likes, move the Government to appeal. In this case the

(1) (1915) I.L.R., 42 Calc., 612.

representative of the Government has told us that having considered the matter the Government would not appeal. But if he cannot get redress that way, he can come before this Court on revision; but then the principle is that it is only to be granted "where it is urgently demanded in the interests of public justice." Applying that to this case, how can it be said that it is urgently necessary in the interests of public justice that this acquittal should be set aside? The case lasted three weeks; it was tried out fully; the assessors were unanimous; the Judge was satisfied with their finding and acquitted the accused with, no doubt, a desire to prevent either this charge being kept longer over the heads of persons who were in his view not guilty and whom he was going to acquit, or perhaps in order to avoid the necessity of letting them out on bail to come back again thereafter to hear their fate. He took the course, which on the face of it seems an eminently reasonable one, of telling the men that they were acquitted, in fact he gave his full reasons for the acquittal at another time and it ended there. Now how it can be suggested that his having done that can amount to an urgent demand in the interests of public justice that the acquittal should be set aside, I cannot see. On these grounds, I think this petition should be dismissed. As regards the question of costs the case will be adjourned to to-morrow.

SCHWABE, C.J.

OLDFIELD, J.—I agree and have nothing to add.

OLDFIELD, J.

COUTTS TROTTER, J.—I agree and only wish to add this, that I am satisfied that this is a case in which we have a discretion and we need not interfere unless we choose, and speaking for myself, I cannot agree to the course suggested, namely, that people who have been tried for their lives for a month and acquitted should be

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made to undergo a re-trial at the instance of a private prosecutor when the Government would not come forward and urge such a case in the Court of Appeal.

ORDER.

SCHWABE, C.J.

SCHWABE, C.J.—We reserved this case for further consideration on the question whether there is power in this Court to grant costs on a revision petition brought not by the Crown but by a private prosecutor against an acquittal, which petition has failed. If there were power, it is a case in which I speaking for myself, would gladly grant costs, because as I have expressed in my judgment on the main point in this case, I think this is a petition which ought never to have been brought, and it is undoubtedly hard that persons, who have been tried for their lives and acquitted, should be put to much further expense on frivolous grounds. However, we have to consider whether this Court has power or not and we have listened to very interesting arguments on both sides on the question. A Court may have inherent power to grant costs. That is clear from a judgment in the House of Lords in *Guardians of West Ham Union* v. *Churchwardens, etc., of St. Matthew Bethnal Green*(1), where the House of Lords held that they had inherent power to grant costs, and in *In re Bombay Civil Fund Act*, 1882; *Pringle* v. *Secretary of State for India*(2), where COTTON and BOWER, L.JJ., state clearly their view that they had an inherent power to grant costs in that matter which came before them, although there was no statutory provision enabling them to grant the costs. But in my view, the exercise of that inherent power must be always restricted and limited to this that if the power of granting costs by the Court in that kind of proceeding is provided for in some way by statute, the

(1) [1896] A.C., 477. (2) (1889) 40 Ch. D., 288.

Court cannot, by invoking its inherent powers, extend the powers which have been granted to it by the statute. Now in this matter we sit in revision in criminal cases first under the Letters Patent and being constituted under the Letters Patent have powers given to us as a Court to hear criminal appeals and revision petitions by the Criminal Procedure Code of 1898. That Code does provide in several instances for the payment of costs. Unlike the Code of Civil Procedure, it has no general clause providing for costs in every case. The section providing for costs are, among others, 148, 433, 488, 526 and 545. The one, and I think the only one, that it is necessary to look into carefully is section 433, because there in a particular form of proceeding before the High Court in criminal cases there is an express provision that the High Court may direct by whom the costs of a reference shall be paid. The other sections are specific instances where power to grant costs is given, such as in maintenance proceedings by a wife and in proceedings to recover stolen property. Having got those instances in which specific power is given to grant costs, in my judgment, the maxim *expressio unius est exclusio alterius* applies; where in specific instances a statute gives a Court power to grant costs and the same statute gives the Court whole criminal jurisdiction, I think the proper rule of interpretation is that expressed in the maxim I have just quoted, with the result that as the Code gives a specific right of granting costs, it excludes any other right of granting costs. There is some authority to the same effect in the three cases which have been quoted to us, *Nallapparaju Venkataramaraju* v. *Medisetti Achayya*(1), *Mahomed Dustagir Sahib* v. *Mahomed Karimudeen*(2), and *Queen-Empress* v. *Yamana Rao*(3), all of them cases in

(1) (1916) 33 I.C., 824. (2) (1889) 2 Weir, 196.
(3) (1901) I L.R., 24 Mad., 305.

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which this Court has refused to grant costs on the ground that it had no power to do so in criminal cases, and with those judgments I agree. It is true that the Privy Council has frequently exercised the power of granting costs in criminal cases but the Privy Council was given that power by a statute and so the fact that the Privy Council exercised that power under the statute does not in any way help in the solution of the question whether this Court has inherent power or not. On those grounds, I think this petition must be dismissed, but there will be no order as to costs.

OLDFIELD, J.

OLDFIELD, J.—I agree.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—I am of the same opinion. It seems to me perfectly clear that we have no express statutory authority to grant costs generally in criminal matters and moreover, as my Lord has pointed out, where the Code intends to confer the power of granting costs, it does so in terms. But then it is said that apart from any question of the Code, the Court has an inherent jurisdiction to put matters right as between those who seek its aid by the granting of costs. The Courts of Equity in England always asserted their possession of such jurisdiction and constantly used it as is pointed out in the judgment of Lord Chancellor Hardwicke in *Corporation of Burford* v. *Lenthall*(1). The Common Law Courts did not attempt to assert their possession of such an inherent jurisdiction and it was often emphatically denied at any rate by equity lawyers, but the House of Lords in *Guardians of West Ham Union* v. *Churchwardens, etc., of St. Matthew Bethnal Green*(2), undoubtedly laid down that as and by virtue of its position as the highest Court in the land and not by any devolution

(1) (1743) 2 Atk., 550. (2) [1896] A.C., 477.

of powers from Courts of equity they had jurisdiction to deal with costs in cases whether arising on the equity or the common law side of the Court. But I think that the main reason why it is not possible for this Court to adopt that line of reasoning and take upon itself the awarding of costs in criminal cases is this—revision is not an inherent power of this or any other Courts; the whole machinery of revision is a creature of statute and has to be found within the four walls of the Code of Criminal Procedure and so far as criminal cases are concerned I do not see how we can possess an inherent power in ourselves to supplement that purely statutory machinery by assuming to ourselves the power of supplementing it by the awarding of costs. I, therefore, am of the opinion that we have no power to do what is asked. It is for the legislature to consider whether the power of revision in cases of the kind that we have seen in these proceedings has not outlived its usefulness, or at any rate, whether it should not be safeguarded by the arming of Courts with the power, at least in cases where revisional proceedings are taken by private prosecutors and not by the Crown, of mulcting them in proper cases by the award of costs.

M.H.H.